

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

Alpha Capital Anstalt,

Plaintiff,

v.

Advanced Cell Technology, Inc.,

Defendant.

11 Civ. 6458 (PAC)

**ANSWER AND AFFIRMATIVE
DEFENSES OF ADVANCED CELL
TECHNOLOGY, INC.**

Defendant Advanced Cell Technology, Inc. (“Defendant”), by and through the undersigned, hereby answers the Complaint of Alpha Capital Anstalt (“Plaintiff”), filed on September 15, 2011 (the “Complaint”), as follows:

The Parties

1. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1 of the Complaint.
2. Defendant denies the allegations in Paragraph 2 of the Complaint.

Jurisdiction and Venue

3. Defendant admits the allegations in Paragraph 3 of the Complaint.
4. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint.

Facts Common to All Claims

5. In response to the allegations contained in Paragraph 5 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Note, Warrant and Subscription Agreement for the contents thereof.

6. In response to the allegations contained in Paragraph 6 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Note, Warrant and

Subscription Agreement for the contents thereof, except admits that other investors also purchased Defendant's Warrants and Convertible Notes.

7. Defendant denies the allegations in Paragraph 7 of the Complaint.

8. In response to the allegations in Paragraph 8 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Notes and Warrants for the contents thereof.

9. In response to the allegations in Paragraph 9 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Notes and Warrants for the contents thereof.

10. Defendant denies the allegations in Paragraph 10 of the Complaint, except refers Plaintiff and the Court to the referenced Warrants and Convertible Notes for the contents thereof.

11. In response to the allegations in Paragraph 11 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Notes and Warrants for the contents thereof.

12. In response to the allegations in Paragraph 12 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Notes and Warrants for the contents thereof.

13. In response to the allegations in Paragraph 13 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Notes and Warrants for the contents thereof.

14. In response to the allegations in Paragraph 14 of the Complaint, Defendant refers Plaintiff and the Court to the referenced Convertible Notes and Warrants for the contents thereof.

15. Defendant denies the allegations in Paragraph 15 of the Complaint, except admits that it issued securities to JMJ Financial, Inc. during the first three months of 2010.

16. Defendant denies the allegations in Paragraph 16 of the Complaint.

17. Defendant denies the allegations in Paragraph 17 of the Complaint.

18. Defendant denies the allegations in Paragraph 18 of the Complaint, except admits that the first six entries on Plaintiff's chart are accurate.

19. Defendant denies the allegations in Paragraph 19 of the Complaint.

20. Defendant denies the allegations in Paragraph 21 of the Complaint.¹

21. Defendant denies the allegations in Paragraph 20 of the Complaint.

First Claim for Relief

22. Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 21 by reference.

23. The allegations in Paragraph 22 of the Complaint call for a legal opinion to which no response is required, and Defendant refers Plaintiff and the Court to the referenced agreements for the contents thereof.

24. Defendant denies the allegations in Paragraph 23 of the Complaint.

25. Defendant denies the allegations in Paragraph 24 of the Complaint.

26. Defendant denies the allegations in Paragraph 25 of the Complaint.

27. Defendant denies the allegations in Paragraph 26 of the Complaint.

28. Defendant admits that Paragraph 27 of the Complaint contains Alpha Capital's request for relief.

Second Claim for Relief

29. Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 27 by reference.

30. Defendant admits that Paragraph 29 of the Complaint contains Alpha Capital's request for relief.

¹ Paragraph 21 appears twice and is out of sequence in the "Facts Common to All Claims" section of the Complaint.

Third Claim for Relief

31. Defendant repeats and realleges its responses to the allegations contained in paragraphs 1 through 29 by reference.
32. Defendant denies the allegations in Paragraph 31 of the Complaint.
33. Defendant denies the allegations in Paragraph 32 of the Complaint.
34. Defendant admits that Paragraph 33 of the Complaint contains Alpha Capital's request for relief.

AFFIRMATIVE DEFENSES

As separate and distinct defenses to the Complaint, and to each of Plaintiff's alleged causes of action, Defendant, without conceding that it bears the burden of proof as to any of the defenses and without admitting any of the allegations of the Complaint, alleges as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE

No conduct allegedly engaged in by Defendant actually or proximately caused Plaintiff any damage.

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims are barred based on the agreements between the parties.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff has failed to join indispensable parties in this action.

Defendant reserves its right to add those affirmative defenses which it deems necessary to its defense during or upon the conclusion of investigation and discovery.

PRAYER FOR RELIEF

WHEREFORE, Defendant requests that this Court order the following relief:

- (a) That Plaintiff takes nothing by its Complaint.
- (b) That the Complaint be dismissed with prejudice.
- (c) That Defendant is awarded its costs, including reasonable attorneys' fees.
- (d) For such other relief as this Court may deem appropriate.

DATED: New York, New York
November 23, 2011

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

By: /s/ Daniel L. Brown
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